

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KENNETH TUCKER,

Petitioner,

**CASE NO. 2:04-cv-0969
JUDGE SARGUS
Magistrate Judge ABEL**

v.

MARC C. HOUK, Warden,

Respondent.

OPINION AND ORDER

On August 15, 2005, the Magistrate Judge issued a *Report and Recommendation* recommending that the petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed. On September 16, 2005, petitioner filed objections to the *Report and Recommendation*. Petitioner objects to all of the Magistrate Judge's conclusions, except that he now withdraws claims seven and eight from federal habeas corpus review. As to the remainder of his claims, petitioner again raises all of the same arguments that were previously presented.

In May 2000, petitioner Kenneth Tucker convicted following a jury trial for aggravated murder, attempted aggravated murder, and aggravated robbery. The petition alleges that Tucker was denied a fair trial due to admission of evidence seized in violation of the Fourth Amendment, prosecutorial misconduct, admission of prior bad acts evidence, a spectator's outburst during the mitigation phase of the trial, use of an impermissibly unreliable identification by the victim, and the trial court's refusal to grant petitioner's request for a continuance.

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of those portions of the *Report and Recommendation* objected to by petitioner. This Court has reviewed the entire record in this case. For the reasons discussed at length in the *Report and Recommendation*, all of petitioner's objections are **OVERRULED**.

The *Report and Recommendation* is hereby **ADOPTED AND AFFIRMED**. This case is **DISMISSED**.

The Clerk is **DIRECTED** to enter final judgment dismissing this action.

IT IS SO ORDERED.



10-31-2005
EDMUND A. SARGUS, JR.
United States District Judge